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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,343	07/08/2003	Gabor Bajko	59643.00228	7843
32294 7590 01/29/2009 SQUIRE, SANDERS & DEMPSEY L.L.P. 8000 TOWERS CRESCENT DRIVE 14TH FLOOR VIENNA, VA 22182-6212				
EXAMINER				
MACILWINEN, JOHN MOORE JAIN				
ART UNIT		PAPER NUMBER		
2442				
MAIL DATE		DELIVERY MODE		
01/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/614,343

Applicant(s)

BAJKO, GABOR

Examiner

John M. MacLwinen

Art Unit

2442

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): Rejections under 35 USC 112, Second Paragraph, of claims 2 and 23.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2, 4-10, 13, 22-25, 46 and 56-71.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 1/6/2009
13. ☐ Other: _____.

/Andrew Caldwell/
Supervisory Patent Examiner, Art Unit 2442

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that "the Office Action [mailed 10/27/2008] failed to consider each and every limitation on the rejected claims". Applicant attempts to support this argument by arguing that the claimed "second layer", recited, for example, in claims 1, 22, 25 and 46, was never addressed or considered. However, said "second layer" was explicitly noted in the multiple times in the rejections of claims 4, 7, 8, 10, 22, 24, 25, 46, 56, 59, 60 and 62. As was explained in the Office Action mailed 10/27/2008, in, for example, claim 22, the "first layer" is represented by the Network Layer "second layer" is represented by the Application Layer; the "Za interface" taught by Jennings in view of Marshall and 3GPP uses IPSec, which is inherently a Network Layer protocol; said references also teach using the "p-asserted-identity" header, as part of the SIP header, which is inherently part of the Application Layer. Applicant's arguments thus are not persuasive.

Applicant continues to argue that "In Jennings, the use of extensions is only applicable inside of an administrative domain". However, Applicant does not provide any support for this assertion. Applicant continues by arguing that "Marshall discloses that the use of these extensions are only applicable inside of an administrative domain" but again does not provide any support for their assertion. Applicant continues arguing that "a combination of Jennings, Marshall, and 3GPP fails to disclose or suggest 'a determiner configured to determine...whether or not the message has been received with security at a first layer". Again, Applicant fails to provide support for their assertion.

Applicant continues by arguing that "Jennings fails to disclose determining whether a message has been received with security at a first layer"; Applicant's arguments are not persuasive as 3GPP, not Jennings, was cited to teach this claim limitation.

Applicant next argues that "Marshall fails to disclose or suggest the foregoing limitation"; however, as the Examiner noted above, 3GPP was cited to teach this limitation.

Applicant next argues that "While 3GPP discloses Za-interfaces that cover secure IP communications....3GPP does not disclose ... whether a message is received with security at a first layer". However, as the Examiner noted above, IPSec is inherently part of the network layer, said network layer representing the claimed "first layer".

Applicant continues to argue that "one skilled in the art would not be motivated" to combine Jennings, Marshall and 3GPP. However, none of Applicant's arguments regarding the combinations of references respond to the motivation statements provided, nor do they provide support for Applicant's assertions. Applicant's arguments thus are not persuasive.

As Applicant's arguments are not persuasive, the grounds of rejection made under 35 USC 103 remain as they were presented in the Final Rejection mailed 10/27/2008 .